

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GRO ELISABET SILLE,

Plaintiff,

vs.

PARBALL CORPORATION, d/b/a, THE
FLAMINGO LAS VEGAS AND
PARBALL CORPORATION, et al.,

Defendants.

Case No. 2:07-CV-00901-KJD-(LRL)

ORDER

Presently before the Court is Defendant's Motion for Summary Judgment (#69). The Court has also considered Plaintiff's Opposition (#79) and the Reply (#86).

FACTS

Plaintiff claims that she was injured on September 18, 2006 at approximately 3:20 a.m. while jogging on Defendants' property, the Flamingo Las Vegas Hotel. She alleges she tripped and fell over a coiled garden hose that was dark in color and in an area insufficiently illuminated for pedestrian foot traffic. In her deposition, she testified that although the area was generally well lit, the hose was in a darkened area and she did not see it before her feet became entangled, causing her to fall, resulting in personal injuries.

Defendants contend that Dr. Thomas J. Ayres inspected the area where Plaintiff allegedly fell on September 1, 2009 between 1:30 and 4:00 a.m. in the presence of three of Defendants' employees who provided affidavits stating that the lighting conditions at the time of the inspection were essentially identical to the lighting conditions at the time of Plaintiff's alleged fall.

The weight to be given the opinions of Plaintiff, Dr. Ayres, and employees of the hotel as to the sufficiency of lighting at the time of the accident, are issues for the trier of fact. Ayres' opinions are based upon the affidavits of employees. However, the employees have merely stated opinions that the lighting at the time of the inspection, three years after the accident, was the same as existed at the time of the accident, and that the area was adequately illuminated. On the other hand, Plaintiff asserts in her deposition that the hose was in a darkened area and that she was unable to see it prior to her accident. Whether Plaintiff made reasonable use of her faculties and whether she should have observed the condition which caused her injury are material issues of fact. Whether Plaintiff was acting reasonably under the circumstances is also a question of fact. Whether Defendant was reasonable in leaving a coiled garden hose in an area intended and used for pedestrian traffic is also a material issue of fact.

DATED: September 30, 2010.

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